IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 591 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SANTOSHKUMAR RAUT

Versus

STATE OF GUJARAT

Appearance:
1. Criminal Appeal No. 591 of 1994
MR HARIT N SOMPURA for Petitioner No. 1
MR. A.J. DESAI, LD. APP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE N.G.NANDI
and
HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 10/10/2003

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE N.G.NANDI)

1. This Appeal under section 374 of the Criminal Procedure Code (herein after referred as the 'Code') has been directed against the judgment & order dated 3-5-1995 in Sessions Case No. 6 of 1994 by Learned Addl. Sessions Judge at Surat, whereby the appellant Santoshkumar Motiram Raut has been convicted for the offence under section 302 I.P. Code and sentenced to suffer imprisonment for life and fine of Rs.500/-; in default one month S.I; that for the offence under section 324, 323 and 325 of I.P. Code sentenced to undergo one year S.I. and fine of Rs.100/-; in default 7 days S.I; that for the offence under section 147, 148 and 149 I.P. Code and sentenced to suffer one year S.I. and fine of Rs.100/-; in default 7 days S.I.

2. The facts leading to the filing of the present appeal by the appellant-convict (original accused No.1) shortly stated are that, Vasant Baburao Pawar was staying at village Panas with his family; that on 3-9-1993 at about 8.15 p.m. his nephew Manish along with wife of the complainant Vasant Pawar returned to their house and told Vasant Pawar that near the canal at Ratilal's pan larry some incident between Dhania and Udiyamali persons was going on in connection with one Pravina Shinde and in this incident persons of Dhania had beaten Udiyamalies; that at about 10.15 p.m. persons of Udiyamalies forming unlawful assembly came to the house of Vasant Pawar and taking Rinkesh-nephew of Vasant Pawar to be Dhania, as Rinkesh resembled in appearance with Dhania dragged him and started inflicting injuries with deadly weapons like knife, iron bar, stump, stick etc. In the said incident Vasant Pawar, Manish Shantaram, Rinkesh Shantaram, Vinay @ Vicky Shantaram, Santosh Tarachand and Bharat Mukund were also given beatings by the said unlawful assembly; that Shantaram Baburao tried to intervene and free his sons and brother Vasant who were being beaten by said unlawful assembly; that Shantaram was lifted and carried by the unlawful assembly towards the pan larry of Ratilal and Santosh Motiram gave knife blow on the neck of Shantaram; that Shantaram was taken to the hospital where he was declared dead by the hospital authorities. Vasantrao Baburao Pawar lodged complaint (exh. 30) about the incident and offence came to be registered against Udiyamalies - Santosh Motiram, Dasrath Vanmal Swai, Uma Vanmal Swai, Bhaskar Gowda Govind Gowda, Laddu Haddu Gowda, Ashok Patra Indrajit Patra for illegally forming unlawful assembly causing murder of Shantaram Baburao Pawar and causing grievous hurt to said Shantaram as well as to the other persons. Thereafter the usual

investigation started. On completion of the investigation chargesheet came to be filed against the accused persons. The accused appeared before the Sessions court to stand trial of the accusations levelled against them. Vide exhibit-2 charge came to be framed against the accused persons. All the accused denied the charge against them and claimed to be tried. The prosecution in order to bring home the guilt to the accused adduced oral as well as documentary evidence. Further statement under section 313 of the Code were also recorded as regards the circumstances emerging from the prosecution evidence incriminating against the accused. The defence is that of total denial. The Trial Court appreciating the oral as well as documentary evidence acquitted accused No. 2 to 6 of the charges levelled against them, whereas accused no.1 Santoshkumar Motiram Raut - the present appellant was found guilty for the offences aforesaid and imposed the sentences above mentioned. It is this conviction and the sentence imposed by the Trial Court which has been assailed in the present appeal by the appellant Santosh Motiram Raut (original accused No.1).

3. It is submitted by Mr. H.N. Sompura, Learned advocate for the appellant that the evidence on record is not sufficient to convict the appellant for the offences charged and found proved by the trial Court. It is further submitted that, out of the six accused persons accused No.2 to 6 have been acquitted and therefore the appellant can not be convicted for the offence under section 147, 148 and 149 I.P. Code as found by the trial Court and therefore the conviction recorded against the appellant and the sentence imposed is liable to be set aside.

It is submitted by Mr. A.J. Desai, Learned APP that PW-1, PW-2, PW-5, PW-6, PW-7 and PW-8 are not only the eye witnesses to the occurrence but have sustained injuries in the incident at the hands of the appellant and other members of the unlawful assembly; that no interference is called for in the impugned judgment convicting the appellant for the offence proved against him and sentences imposed.

We have reappreciated the evidence on record and also considered the submissions advanced by Learned Advocate for the appellant as well as Learned APP for the respondent State.

4. It is not disputed that in the incident which took place at 9.45 p.m. an unlawful assembly comprising

more than five persons caused injury to Shantaram Baburao Pawar. Exh. 15 is the inquest panchnama of dead body of Shantaram drawn in presence of two panchas. Perusal of the same suggests that dead body of Shantaram Baburao was lying on stretcher in the new Civil Hospital at Surat and that on left side of the neck there was 3" long wound which was bleeding. Exh. 28 is the postmortem report proved in the evidence of PW-4 Dr. Ilyas Shaikh, who has performed the postmortem on the dead body of Shantaram Baburao on 4-9-1993. It is suggested from exh. 28 postmortem report as well as deposed by PW-4 that the cause of death is shock as a result of hemorrhage as a result of stab injury to neck vessels on left side (cut throat); that injury No.1 on throat was sufficient to cause death in ordinary course of nature. Thus it would be seen that Shantaram Baburao died a homicidal death on account of injuries received by him in the incident which took place on 3-9-1993 at 10.15 p.m.

5. As far as the occurrence is concerned the say of the prosecution is that on 3-9-1993 at about 10.15 p.m. hue & cry was raised near the house of Vasantrao - complainant, whereupon he came down, at that time he found his brother Shantaram, his wife Suvarnaben and his nephews standing on the otta; that a crowd of 10 - 15 Udiyamali persons rushed towards the house of Shantaram Baburao and pointing at Rinkesh, son of Shantaram said "he was there", whereupon the other persons with Santosh dragged Rinkesh and started beating him; Vijay tried to intervene to free Rinkesh, at that time Santosh inflicted knife blow on one of the ears of Vijay causing injury to him; that the complainant also intervened who was given blow with stick on his head by Santosh; that other persons i.e. Manish, Bharat Mukund and Santosh Tarachand were also inflicted injury by this mob; that Shantaram seeing the witness being beaten with iron bar by Laddo intervened and tried to pacify and rescue the complainant and his sons; that Shantaram was then lifted by the mob and carried towards pan galla of Ratilal near canal and then taken to the main road; that Shantaram was given knife blow on left side of his neck by Santosh Motiram who was also in the mob. Shantaram was declared dead when brought to the hospital.

It is suggested from the evidence of PW-1 (complainant) that a mob of 15 - 20 Udiyamali persons came to his house at about 10.15 p.m. and Santosh Motiram pointed at Rinkesh taking him to be Dhania and thereafter Rinkesh was dragged and the assembly started giving injuries to Rinkesh; that his other nephew Vijay was also felled down and Santosh took out the knife and

gave injury on the right ear of Vijay; that Manish was also given beatings by members of the assembly with stick and iron bar injuries were also inflicted on Manish; that Laddu started giving iron bar blows to witness and seeing this Shantaram tried to rescue the witness; that after Shantaram was beaten he was lifted by the members of the assembly and taken to the main road towards pan galla; that Suvarnaben the wife of Shantaram followed the mob trying to free her husband; that she was also manhandled and was given beating by fist; that besides inflicting knife blow on the neck of Shantaram by Santosh other members of the assembly also gave beatings to Shantaram; that after inflicting injuries on Shantaram the mob went away; Shantaram was then taken to new Civil Hospital at Surat where he was declared dead. It is also suggested from the evidence of PW-1 that before the incident he new Santosh staying in a lane opposite the Temple; the witness has also identified Santosh before the the Court. Thus it is suggested from the evidence of PW-1 that Santosh Raut besides other members of unlawful assembly was in the assembly as one of the members of the unlawful assembly and is stated to have inflicted knife blow on the neck of deceased Shantaram in the incident and he is identified by PW-1 also in the Court and known to the witness prior to the incident as Santosh was staying in the lane opposite the Temple in village Panas. Thus the identity of Santosh in the incident is sufficiently suggested from the evidence of PW-1 and he has also been identified in the Court by the witness. Santosh has been attributed knife blow to Shantaram besides other injuries caused.

PW-2 Suvarnaben, wife of deceased Shantaram has stated in her evidence that the mob of Udiyamalies had come to their house; that Santosh Motiram pointing at her son Rinkesh stated that " he was there " and so saying Santosh inflicted injury in the head of Rinkesh and also gave knife blow on the ear of her son Vijay; that her son Manish and brother-in-law Vasantbhai intervened to rescue but they were also beaten by the mob of Udiyamalies; that her husband intervened and her husband was lifted and taken by the mob towards the main road near the pan galla and Santosh inflicted knife blow on the left side of the neck of Shantaram. The witness has identified Santosh Motiram in the Court as the person who inflicted knife blows. The evidence of this witness suggests that she knew Santosh prior to the incident, residing in Temple lane in her village and she also identified Santosh Motiram in the incident having inflicted knife blow on the ear of her son Vijay and also knife blow on the neck of her husband Shantaram.

The evidence of PW-5 Rinkesh Shantaram suggests that, upon hearing cries he came out of his house and found Udiyamalies having come to his house; that at that time Santosh pointed at him saying " he was there" whereupon 2 - 3 persons of the assembly dragged the witness out and gave stick blows; that Santosh had felled down Vijay and inflicted knife blows on his ear; that his other brother Manish and uncle Vasantrao were given blows with stick and iron bar by Udiyamalies; that seeing this his father Shantaram intervened and 10 - 15 Udiyamalies lifted Shantaram and brought him to main road near pan galla of Ratilal and there Santosh inflicted knife blow on the neck of Shantaram; that mother of the witness also tried to intervene and she was also given fist blows; that first Santosh gave knife blow on the ear of Vijay and thereafter he gave knife blow on the neck of Shantaram and caused death; that he knows Santosh by his face prior to the incident. The witness has identified Santosh Motiram in his evidence as one of the members of the unlawful assembly causing injuries in the incident to his father, brothers, uncle , mother etc. Thus the witness has implicated Santosh Motiram in the incident as one of the members of the unlawful assembly attributing injuries with knife to Vijay and Shantaram.

The evidence of PW-6 Manish Shantaram stated in his evidence that at about 10.00 - 10.15 O' clock in late evening he heard cries whereupon he came to the otta of his house and learnt that Bharat Mukund and Santosh Soni are beaten by Udiyamalies and thereafter the mob of Udiyamalies came to the house of the witness and pointing at Rinkesh Santosh said "he was there"; that thereafter, the members of the unlawful assembly dragged his brother Rinkesh and started giving beatings to him; that Vijay tried to rescue Rinkesh who was given knife injury on the ear; that witness intervened and he was also given stick blow by members of the assembly; that his uncle Vasantrao was also beaten with stick; that his father Shantaram who intervened to rescue was lifted by Udiyamalies and brought to the main road near Ratilal's pan larry; that the witness his brothers, uncle and mother tried to intervene; that during that time Santosh inflicted knife blow on neck of his father Shantaram; that his mother was also given stick and fist blows. It is also suggested form this witness that the witness has identified Santosh Motiram as one of the members of the unlawful assembly in the incident and also identified in the Court stating that he has inflicted injuries with knife to Vijay and his father Shantaram.

PW-7 Vijay Shantaram Pawar has stated in his evidence that a crowd of Udiyamalies came to their house and Santosh Motiram pointed at Rinkesh stating that "he was there" whereupon two Udiyamalies started giving stick and stump blows to Rinkesh and that Santosh dragged the witness and inflicted knife blow on his right ear; that other Udiyamalies gave blows with stick and stump to his uncle Vasant Pawar, brother Manish ' that Vasant, Rinkesh and Manish had sustained injuries in the head; that in the meantime their father tried to intervene who was lifted by Udiyamalies and brought to main road near pan galla of Ratilal, there Santosh dealt knife blow on the neck of Shantaram; that his mother was given fists blows. Thus the evidence of the witness suggests that the witness was given beatings in the incident and sustained knife injury at the hands of Santosh on his right ear and that Santosh also dealt knife blow on the neck of his father Shantaram. This witness has specifically deposed about the part played by Santosh in the incident namely inflicting knife injuries on the right ear of the witness and knife blow on the neck of his father Shantaram. The witness also identified Santosh in the Court and also stated that Santosh was known to the witness prior to the incident.

6. Thus it would be seen from the above evidences that not only the complainant PW-1 but other injured eye witnesses PW-2, PW-5, PW-6, PW-7 and PW-8 have specifically deposed about Santosh having come to their house along with 10 - 15 Udiyamali persons and Santosh pointing out Rinkesh said "he was there" whereupon Rinkesh was given beatings by Udiyamalies. In the incident Santosh gave knife blow on the right ear of Vijay. It is also suggested from evidence that Udiyamalies lifted Shantaram who tried to intervene and rescue his sons and brother, and was taken to main road near pan galla of Ratilal where Santosh dealt knife blow on the neck of Shantaram. It is also suggested from the evidence that Santosh Motiram was known to the complainant and other prosecution witnesses prior to the incident as Santosh stayed in lane opposite the Temple in village Panas. Thus Santosh was known to the complainant as well as injured eye witnesses in the occurrence and identifying Santosh Motiram in the incident is more than sufficiently established by the evidence on record and all the prosecution witnesses have consistently deposed that Santosh Motiram inflicted injuries on Vijay and deceased Shantaram. The evidence of PW-1 complainant has been sufficiently corroborated by the medical evidence PW-4 and postmortem note exh. 28 and other prosecution witnesses discussed above. All the prosecution witnesses

have identified Santosh Motiram in the incident and also before the Court in course of their deposition. Thus the prosecution has established involvement of Santosh Motiram in the incident causing injury to the prosecution witnesses as well as to the deceased. It is also suggested that Shantaram succumbed to the injuries inflicted on the neck by Santosh Motiram as deposed by PW-4 and suggested from post mortem exh. 28.

7. PW-11 Dr. Babubhai Ravjibhai Panchani stated in his evidence that on 3-9-1993 at about 11.35 p.m. he had examined and treated Manish Shantaram Pawar (PW-6) of village Panas and for the external injuries noticed by him have been noted in the certificate exhibit-44 issued by the witness.

That PW-11 on the same day at about 11.00 p.m. examined and treated Rinkesh Shantaram (PW-5) for the external injuries found and noted in the certificate exhibit-45 issued by the witness.

That the witness at about 11.00 in the night on the same day examined and treated Vijay Shantaram (PW-7) for the external injuries noted in the certificate exhibit-46 issued by the witness.

That during the same night at 00.15 hrs. PW-11 examined and treated Bharat Mukund (PW-9) and found the injuries noted in exhibit-47.

That the injuries noted in certificates exhibit-44 to 47 were caused within 2 - 3 hours of the examination.

That during same night PW-11 examined and treated Vasantrao Baburao (PW-1) at 00.50 hrs and noticed the external injuries recorded in the injury certificate issued by the witness at exhiit-48.

That the injuries noted in certificate exhibit-48 were recent injuries.

Thus, it will be seen that the injuries received by PW-5, PW-6, PW-7, PW-9 and PW-1 in the incident and certified vide Exh. 44 to 48 have been proved through the evidence of PW-11.

8. It has been submitted by Mr. Sompura, Learned advocate for the appellant that the conviction recorded by the trial Court for the offence under section 147, 148 and 149 of I.P. Code cannot be sustained since five out

of six accused persons have been acquitted and lone convict is the present appellant.

9. Learned Trial Judge has convicted appellant Santosh Motiram Raut for the individual offence namely offence under section 302, 324, 323 and 325 I.P. Code and imposed sentence as pointed out above. Since the appellant convict has been convicted for the individual offence proved against him, in our opinion it was not necessary for the trial Court to record the conviction against Santosh Motiram Raut for the offence under section 147, 148 and 149 I.P. Code, and therefore we set aside the conviction recorded against Santosh Motiram Raut for offence under section 147, 148 and 149 I.P. Code sentencing him to suffer 1 year S.I. and fine of Rs.100/-; in default 7 days S.I. The appeal to this extent deserves to be partly allowed. Whereas the conviction recorded for the offence under section 302, 324, 323 and 325 I. P. Code and the sentence imposed for said offences by the Trail Court deserves to be confirmed since no interference is called for in the impugned judgment convicting the appellant for the offences under section 302, 324, 323 and 325 of I.P. Code.

10. In the result the appeal is partly allowed to the extent that the conviction recorded against the appellant-convict Santoshkumar Motiram Raut for the offence under section 147, 148 and 149 I.P. Code and imposing sentence of one year S.I. and fine of Rs.100/-; in default 7 days S.I. by the Trial Court are set aside.

Whereas the conviction recorded against the appellant-convict Santoshkuamr Motiram Raut for the offence under section 302, 324, 323 and 325 and the sentence imposed by the Trial Court are confirmed. All the substantive sentences shall run concurrently.

Dt: 10-10-2003 (N.G. Nandi, J)

(M.C. Patel, J)

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